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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAN NGUYEN,

Defendant and Appellant.

A136935

(Solano County
Super. Ct. No. VCR211548)

Dan Nguyen (“Nguyen”) appeals from a conviction for armed robbery following a jury trial. Nguyen contends that reversal is required because the trial court committed prejudicial error by refusing to exclude an identification of him at an in-field showup. Nguyen also argues that there was insufficient evidence to support a verdict of guilty beyond a reasonable doubt. We affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 7, 2011, Nguyen was found guilty by a jury of two counts of second degree robbery (Pen. Code, § 211) with two firearm enhancements (Pen. Code § 12022.53, subd. (b)). On October 3, 2012, he was sentenced to state prison for two concurrent thirteen-year terms, consisting of three-year middle terms for the robberies and ten-year terms for the firearm use, to run consecutively.

A. *Testimony at Trial*

1. *Austin Link*

At approximately 2:00 a.m. on June 22, 2011, Austin Link and his girlfriend Sarah Yambao were robbed on Southport Way in Vallejo, California. Yambao drove Link home in a green Astro minivan. The couple had been at the beach the previous day and were on their way home. Before the robbery, Link noticed a red Acura Integra driving slowly in front of them at about five miles per hour. Yambao tailgated the Integra for about 300 yards to “try to hurry it up.” The two-door Integra then stopped and two people came out, one from the driver’s side and one from the passenger’s side. Link testified that he saw another person in the rear passenger seat through the rear window. He said it was possible that there may have been a fourth individual in the vehicle.

When the two robbers came out of the Integra, they drew their guns on both Yambao and Link and first went to Yambao’s side of the vehicle. One of the robbers looked a bit bigger and older while the other robber looked smaller and had long black hair. The robbers proceeded to say, “ ‘You shouldn’t have been tailgating us.’ ” Then, the robbers said, “ ‘Give us everything you have.’ ” Link responded, “ ‘We don’t have anything. Just let us go. . . . All we have is towels.’ ” Link then tried handing over the towels, but the robbers refused and demanded money. Link was afraid that he would be shot when one of the robber said, “ ‘Just end it. Just finish him, shoot him.’ ” Link also noticed that the robbers used black, semi-automatic guns that did not look like fake, airsoft guns with orange tips. One of the robbers reached through the window and grabbed Yambao’s cell phone and her bag. Then, Link gave around \$25 dollars from his front pocket through the window to the smaller robber. The robbers went back to the red Integra after they took the money and left.

Link testified that the robbery took about two minutes total. Link could see the faces of the robbers throughout the robbery until the end when they began to cover up. He said they both looked Vietnamese. According to Link, the bigger robber had short hair and looked older, around the age of 25, with a white t-shirt on. The other robber

wore a baseball cap, was about 5'8" in height and 160 pounds in weight and about 20 years old with two-foot-long black hair tucked into his cap.

As the robbers took off, Link wrote down the license plate of the vehicle and called the police one minute later. Link called the police from his home, which was very close to the scene of the robbery. Link then went on Facebook to try to identify the robbers by looking at his Vietnamese friends' pictures. He initially went to Hao Le's Facebook profile because he is "one of my older Vietnamese friends and I just figured it would be a good place." After looking through about fifteen profiles, nothing caught his attention. In particular, Link said he browsed Nguyen's Facebook profile at this time and was not able to identify him in those pictures.

The police called Link and told him they had pulled a car over with the same license plate and matching the description that Link gave them. The police brought Link to a location seven miles away where an officer told him he was going to identify the potential people who robbed him. Link and Yambao were separated into two different cars to identify two possible suspects. Link testified he did not feel under any pressure to pick anyone out, and the officer told him to say whether he could identify a suspect or not. Link looked at the suspects from the officer's car with the adjustable floodlight shining on them and the street lights far away. The suspects were brought out together and were approximately thirty to fifty feet away from Link. He also noticed the red Integra when he was looking at the suspects. Link only recognized the smaller individual as a person involved in the robbery because of his outfit and long black hair. Link recalls that this smaller suspect wore a sweatshirt and jeans. He testified that he was too far away to see appellant's face. Link stated that he did not recognize the other suspect as an individual involved in the robbery because he did not come up to the window of his car. Later on, Link was told that this other suspect was Hao Le, an individual he had known for three to four years and wrestled with in high school. He said Le could have been the third person in the back of the car.

When Link received a court subpoena with Nguyen's name on it, he searched Nguyen's Facebook page, but there were no pictures of Nguyen's face. However, Link

did identify the red Integra vehicle with the matching license plate number in one of the pictures on Facebook.

2. Sarah Yambao

At approximately 2:00 a.m. on June 22, 2011, Sarah Yambao drove her boyfriend, Austin Link, to his home in Vallejo, California. Yambao noticed a red Integra in front of her slowing down until it came to a complete stop when two men came out with guns. A “bigger, kind of chunky” man came to her window with a hood on. This bigger robber came out of the driver’s side door and a smaller robber came out of the passenger’s side door. The smaller robber had a red baseball hat on and went to Link’s window. The smaller robber was Vietnamese and had shoulder length, curly hair. Yambao also described the smaller robber as about 5’6” in height and the same age or a little bit older than her. Both robbers initially came to her side of the window and then the smaller robber went over to Link’s window.

Both robbers had guns and the bigger robber pointed a gun at her for ten to fifteen minutes. The bigger robber said, “ ‘Open the car and give me all your money.’ ” “ ‘Give me whatever you have.’ ” Yambao felt threatened because the smaller robber wearing red said to Link, “ ‘Just shoot that Nigga.’ ” Link ended up giving the smaller robber \$30 dollars and then the bigger robber grabbed Yambao’s Mickey Mouse purse and blackberry phone through her open door. After the robbers took these items, they got back into the red Integra and drove off. Then, Yambao told Link to write down the license plate number.

Link and Yambao went to Link’s house to call the police and provide them with the license plate number. Approximately ten to fifteen minutes later, Officer Coburn took Link and Yambao to a location to identify the suspects. She testified that two suspects were shown to her and she recognized the smaller robber as Nguyen because his hat, height, and weight were similar to his appearance during the robbery. Yambao was less sure about the bigger robber, but noted that he looked like one of the robbers. Yambao stood a little bit further than 42 feet away when viewing Nguyen at the field showup. The headlights of the police cars illuminated the area of the field showup.

Yambao testified that she could see enough of Nguyen's face to be able to recognize that he robbed her. She also noticed the red Integra and assumed that the two people that were apprehended by police were the robbers. But, Yambao said that is not why she picked out the smaller robber. She said that the smaller robber "looks straight on like him. That's why I picked him." She confirmed that the presence of the red Integra did not affect her recognition of Nguyen's face.

Yambao testified that she did not think she went on Facebook during the time in between the robbery and the in-field showup. But, Yambao and Link did search Nguyen's Facebook profile when they discovered his name after the in-field showup and found pictures of the red Integra with the matching license plate. Yambao also testified that she saw Nguyen's Facebook profile picture and recognized his face. However, when she saw Hao Le at the preliminary hearing, she said he was not the bigger robber.

At trial, Yambao identified Nguyen as one of the people that robbed her. She noted that Nguyen's hair looked shorter and curly during the robbery, but she remembered his face and the hair color was the same. Yambao said he wore red clothing at the time of the robbery.

3. *Officer Robert Wardlow*

Officer Robert Wardlow received a notification of a robbery on June 22, 2011, around 3:00 a.m., with a description of a red Acura-type compact vehicle with a specified license plate number. Wardlow and his fellow officers made a felony car stop and pulled the suspected car over that had two people in it. Nguyen was the driver and Hao Le, the "heavier-set Asian," was the passenger. Nguyen had longer hair on the day of the robbery than during Wardlow's testimony. At the time of the robbery, Nguyen's hair was shoulder length and hanging out from the back side. Nguyen wore a solid red, fitted baseball-type cap on the day of the robbery. Wardlow also testified that Nguyen wore khaki pants and a red shirt that signified where he worked, a restaurant called "Pizza Guys."

After Officer Wardlow took Nguyen into custody at the police department and read him his Miranda rights, the accused told Wardlow he did not know of any robbery

that took place. Nguyen told the officer that he came from a party, but did not remember where it was or who hosted it because he drank too much. Wardlow also testified that Nguyen did not appear to be under the influence of drugs or alcohol.

4. *Officer Jeff Coburn*

At approximately 3:00 a.m. on June 22, 2011, Officer Jeff Coburn went to Austin Link's home where he took Link and Yambao to a location close to where the suspects were stopped. At this location, the officers admonished both victims and conducted two separate in-field showups after putting Link and Yambao in separate cars. Officer Coburn told Yambao that he stopped a car that matched their description of the vehicle. He also told Yambao that the police had two individuals in the car that may or may not have been involved in the crime that they reported to them. Coburn also told Yambao that she was under no obligation to identify anybody and that "[i]t was [as] important to eliminate the innocent as it was to identify the responsible." Coburn testified that Yambao "immediately identified the smaller-framed individual, the one that I recall also wearing the bright red hat. She identified him right away." Yambao identified Nguyen. Coburn said that Yambao believed the larger individual was a robber, but did not sound as positive.

5. *Officer Steven Fowler*

Officer Steven Fowler was riding along with Officer Wardlow during the felony car stop of the suspects in the red Acura. Fowler also noted that Nguyen wore a red hat. Fowler stated that appellant did not appear to be intoxicated when appellant complied with his felony car stop voice commands. Fowler said Hao Le also did not appear to be intoxicated when he interviewed him at the police department. Fowler did not find Yambao's Mickey Mouse bag or cell phone when he searched the vehicle.

6. *Hao Le*

Hao Le testified under a grant of immunity pursuant to Penal Code section 1324. On the evening of June 21, 2011, Nguyen picked up Le at his house in Vallejo in his work uniform. Nguyen was driving a red, two-door Acura with no other passengers in the vehicle. Nguyen and Le went to go drink alcohol at a viewpoint in Vallejo around

9:00 p.m. where they met up with some other people. Le testified that he drank one and a half forty-ounce bottles of beer. At approximately 11:00 p.m., Le was drunk and went into the backseat of Nguyen's car to sleep. Le is a heavy sleeper and was "knocked out" with the aid of the alcohol in his system.

After falling asleep, the next thing Le remembered initially was being pulled over and getting arrested. Later, however, Le spoke with Officer Coburn at his house about the time between when he fell asleep and when he was pulled over in the car. He then recalled that Nguyen stopped the car and instructed Le to move from the backseat to the front passenger seat where he fell asleep again. Le said while he was changing seats he saw a larger person wearing a black hoody walk away from the vehicle with the passenger door open. He also said there was no one else in the backseat because he was laying down on it. From the time Le changed seats and the time the car got pulled over, approximately ten to fifteen minutes passed. Le did not know why the car was pulled over and asked Nguyen. Nguyen kept his mouth shut and bowed his head saying "I don't know" to Le.

7. *Thanh Le*

Thanh Le, Hao Le's older brother, went to visit Nguyen some time between May and June 2011 in the Fairfield jail asking him to sign an affidavit saying that Hao Le was not involved in the robbery. Nguyen refused to sign the affidavit because "if he did write it, then basically he would admit to some sort of guilt." Nguyen told Thanh Le that neither he nor Hao were involved in the crime.

8. *Charles Peckinpaugh*

Charles Peckinpaugh, a former teacher of Nguyen, believed his involvement with a robbery would be out of character for Nguyen and that he was never a violent person.

9. *Regina Rayford*

Regina Rayford, a friend of Nguyen's family for ten years, also testified that she never knew Nguyen to be a violent person and his involvement with the robbery was out of character. She also testified that he had made a bad choice of friends of late and was around troublemakers.

B. The Defense’s Trial Strategy and the Jury Verdict

The defense attempted to point out inconsistencies in Link and Yambao’s identifications and testimony in regard to Nguyen’s height, weight, hair length, and clothing that he wore. Furthermore, the defense tried to show the impropriety of the in-field showup conducted by the police officers. Defense counsel also reminded the jury that no independent evidence was found in this case such as firearms, stolen property, or any other people from the vehicle.

Nonetheless, the jury found Nguyen guilty of two counts of second degree robbery (Pen. Code, § 211) with two firearm enhancements (Pen. Code, § 12022.53, subd. (b)).

Nguyen filed a notice of appeal on October 16, 2012.

C. Exclusion of Link’s In-Court Identifications

Prior to trial, Link had testified at the preliminary hearing with respect to the crime. During his testimony, the following exchange between Mr. Ganz, the prosecutor, and Link transpired: Ganz asked Link, “Do you see anyone else from that day in court?” Link responded, “I do not.” This was the first time Link did not identify Nguyen.

Later, Ganz asked Link a series of questions such as whether he recognized Nguyen on Facebook after the robbery but before the in-field showup. Link replied, “ ‘I mean, like, there were—there were pictures—I don’t—that is what I’m saying. I mean, if I saw a picture of his face, I would for sure have remembered it without a doubt. But I’m saying, like—from what I remember, like, there were—there might have been, like, him with a bunch of people, you know, far away to where I can’t see his face.’ ” Ganz proceeded to ask Link, “ ‘And you don’t see that person in court today?’ ” Link responded, “ ‘Yeah . . . I don’t—I mean, I know that is supposedly him right there, but I’m saying I don’t really recognize him.’ ” This was the second time that Link did not identify Nguyen as the robber in the preliminary hearing.

Then, Ganz said, “The person that you think you are supposed to know as him, can you just point to him for the record.” Link replied, “Right there in the striped pink, orange, white.” Ganz asked, “May the record reflect the witness identified Mr. Nguyen.” The court proceeded to confirm the identification.

Ganz further questioned Link asking, “So the person you’ve identified in the stripes, is there anything about that person as you look at him today that would make you think that is not the guy?” Link replied, “No I think it is him.” Ganz asked, “But you are not sure?” Link said, “I’m not sure; that is what I’m saying.”

Ganz asked the court to allow Nguyen to stand up and turn around so that Link could see the back of his head and hair. The court granted his request. Ganz asked Link, “Mr. Link, the height of the person that just stood up. How does that compare with the height of the person who had the red hat on?” Link responded, “I’d say now it’s a little more—yes, I feel that it is a little—I’ve associated a bit more in my memory to my belief that that was the person who did it that night.”

Thereafter, appellant filed a motion to exclude Link’s out-of-court and in-court identifications alleging that the identification procedures used in both instances were unduly suggestive. The trial court denied appellant’s motion to exclude Link’s out-of-court identification of Nguyen at the in-field showup because “any defects in the lighting and other problems with the scene go more to the weight of the evidence as opposed to the admissibility.” On the other hand, the trial court granted appellant’s motion to exclude Link’s identification of Nguyen in the preliminary hearing after he did not identify Nguyen twice. The trial court determined that Link’s testimony after this statement was elicited under unduly suggestive procedures by the prosecutor.

After an Evidence Code section 402 hearing, the trial court also excluded any future in-court identification of appellant made by Link at trial because it would be impermissibly tainted by the proceedings at the preliminary hearing. The trial court found that the prosecution did not meet its burden to show by clear and convincing evidence that the identification made by Link at the Evidence Code section 402 hearing was independent of the taint of the improper questioning that occurred at the preliminary hearing.

Yambao’s identifications of Nguyen at the preliminary hearing, the in-field showup, and at trial were not challenged by appellant as unduly suggestive and thus not excluded by the court.

II. DISCUSSION

A. *Standard of Review and Relevant Legal Principles*

We review de novo “a trial court's ruling that a pretrial identification procedure was not unduly suggestive.” (*People v. Kennedy* (2005) 36 Cal.4th 595, 609, disapproved on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459.) “We review deferentially the trial court’s findings of historical fact, especially those that turn on credibility determinations, but we independently review the trial court's ruling regarding whether, under those facts, a pretrial identification procedure was unduly suggestive.” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 943.) The defendant has the “burden of showing unfairness as a demonstrable reality, not just speculation.” (*People v. DeSantis* (1992) 2 Cal.4th 1198, 1222.) A defendant who claims an unduly suggestive identification has the burden of showing that it gave rise to “ ‘a very substantial likelihood of irreparable misidentification.’ ” (*People v. Cowger* (1988) 202 Cal.App.3d 1066, 1072.)

An in-field showup is “an informal confrontation involving only the police, the victim and the suspect.” (*People v. Rodriguez* (1987) 196 Cal.App.3d 1041, 1049 (*Rodriguez*)). A “ ‘single person showup’ is not inherently unfair.” (*People v. Floyd* (1970) 1 Cal.3d 694, 714, disapproved on other grounds in *People v. Wheeler* (1978) 22 Cal.3d 258, 287, fn. 36; see *People v. Ochoa* (1998) 19 Cal.4th 353, 412 (*Ochoa*); *People v. Bisogni* (1971) 4 Cal.3d 582, 587; *People v. Bauer* (1969) 1 Cal.3d 368, 374; *People v. Burns* (1969) 270 Cal.App.2d 238, 246.) “A procedure is unfair which suggests in advance of identification by the witness the identity of the person suspected by the police.” (*People v. Slutts* (1968) 259 Cal.App.2d 886, 891.) “[S]ingle-person show-ups for purposes of in-field identifications are encouraged, because the element of suggestiveness inherent in the procedure is offset by the reliability of an identification made while the events are fresh in the witness’s mind, and because the interests of both the accused and law enforcement are best served by an immediate determination as to whether the correct person has been apprehended. [Citation.] The law permits the use of in-field identifications arising from single-person show-ups so long as the procedures

used are not so impermissibly suggestive as to give rise to a substantial likelihood of misidentification.” (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 387.)

In determining whether a particular identification is constitutionally unreliable, a court considers: “ ‘(1) whether the identification procedure was unduly suggestive and unnecessary [citation], and, if so, (2) whether the identification itself was nevertheless reliable under the totality of the circumstances, taking into account such factors as the opportunity of the witness to view the criminal at the time of the crime, the witness’s degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation [citation]. If, and only if, the answer to the first question is yes and the answer to the second is no, is the identification constitutionally unreliable.’ ” (*People v. Ochoa*, *supra*, 19 Cal.4th at p. 412.) “In other words, ‘[i]f we find that a challenged procedure is not impermissibly suggestive, our inquiry into the due process claim ends.’ ” (*Ibid.*)

B. The Trial Court did not Err by not Excluding Link’s Identification of Appellant at the In-Field Showup

Nguyen argues that Link’s identification of him at the in-field showup was unduly suggestive on a number of grounds. Specifically, he maintains that the presence of the red Integra at the in-field showup made Link’s identification unduly suggestive. Second, he claims that the police made improper statements regarding the possible identity of Nguyen as a suspect before the in-field showup occurred. Third, he suggests a number of circumstances—such as Link’s use of Facebook and his inaccurate identification of Nguyen’s appearance—that point to the inherent unreliability of Link’s identification under the totality of the circumstances. We address each assertion in turn.

1. The Red Integra in the Background

Nguyen first contends that Link’s identification of Nguyen at the in-field showup was unduly suggestive because it was conducted with the red Integra in the background. As respondent correctly asserts, however, there was no evidence suggesting that Link was unduly influenced by the presence of the vehicle in regard to identifying appellant.

While Link saw the red Integra with the matching license plate at the in-field showup, there is no evidence showing he equated the identification of the appellant with the vehicle. *People v. Craig* (1978) 86 Cal.App.3d 905, is instructive. In that case, the defendants argued, in part, that the in-field identification was too suggestive because “the victim had seen the escape vehicle abandoned in the parking lot.” (*Id.* at p. 914.) The court held that the procedures used by the police were justified under the circumstances and that the identification was not unnecessarily suggestive. (*Ibid*; See *Rodriguez, supra*, 196 Cal.App.3d at pp. 1049-1050 [presence of car used in commission of crime at in-field showup not unduly suggestive].) Similarly, in the instant case, Link saw the red Integra when he was viewing the suspects and the procedures used by the police were justified considering the “reliability of an identification made while the events are fresh in the witness’s mind.” (*In re Carlos M., supra*, 220 Cal.App.3d at p. 387.)

The defendant bears the “burden of demonstrating the identification procedure was unduly suggestive.” (*People v. Avila* (2009) 46 Cal.4th 680, 700 (*Avila*).) Here, the defendant did not meet his burden. Rather, as in *Rodriguez*, “there is nothing in the record of the hearing indicating . . . whether or not their identifications of appellant were affected by the presence of the vehicle.” (*Rodriguez, supra*, 196 Cal.App.3d at pp. 1049-1050.) Also comparable to other identification situations, the fact that the red Integra was visible does not make it prejudicial in itself. (Cf. *In re Carlos M., supra*, 220 Cal.App.3d at p. 386 [“mere presence of handcuffs on a detained suspect is not so unduly suggestive as to taint the identification”].) We find that the existence of the red Integra at the in-field showup was not unduly suggestive.

2. Police Comments at Time of Show-Up

Next, Nguyen argues that the officers’ conduct before the in-field showup was unduly suggestive when they told Link that he was “going to identify the potential people who robbed” him. On its face, the officers’ statement might seem to raise the inference of impermissibly suggestive behavior by the police, but the entirety of the record shows otherwise. For example, the officer that brought Link to the in-field showup also told him to let him know either way whether he identified a suspect or not. In *People v.*

Anthony, the court did not find impermissibly suggestive activity when a police officer asked the witness “ ‘[who] was the one that came in’ ” when he drove the defendant to the scene of a robbery in a police car. (*People v. Anthony* (1970) 7 Cal.App.3d 751, 764 (*Anthony*)). Here, the statement that the police officer made to Link that he was “going to identify the potential people who robbed us” is akin to the language used in *Anthony*. Additionally, in *People v. Ballard* the police told the victim at the police lineup that they “had two suspects who ‘fit the description’ that she had given them of the perpetrators of the offenses.” (*People v. Ballard* (1969) 1 Cal.App.3d 602, 605.) That court also did not find the language used by the police “to be of such a suggestive nature as to make . . . the . . . identification unfair or untrustworthy.” (*Id.* at p. 605.) We do not find the police’s statement about identifying the potential robbers as unduly suggestive.

Furthermore, Link took down the license plate number and reported it to the police himself. Thus, he already knew that he would likely be identifying suspects from the same car. As the Appellate Division of the Supreme Court of New York concluded under essentially identical circumstances “even assuming that the police had made the complainant aware that he was being asked to view suspects arrested in the getaway car for which the complainant had provided a license plate number only minutes previously, this would not have tainted the identification because the complainant would have expected such a circumstance on the basis of his own common sense.” (*People v. Green* (1998) 256 A.D.2d 85, 85-86.) Thus, we find no unduly suggestive activity by the police when they told Link they found a car matching his description of the vehicle. (Cf. *ibid.*) Also, “ ‘[a]nyone asked to view a lineup would naturally assume the police had a suspect.’ ” (*Avila, supra*, 46 Cal.4th at p. 699.) Here, the officer’s mere mention to Link that he was about to identify the people who may have robbed him does not rise to the level of suggestiveness disapproved of by courts.

Because we have concluded that Link’s in-field showup in this case was not unduly suggestive, we need not reach appellant’s various arguments attempting to undercut the reliability of that identification under the totality of the circumstances test. (*Ochoa, supra*, 19 Cal.4th at p. 412.) As stated above, “ ‘[i]f we find that a challenged

procedure is not impermissibly suggestive, our inquiry into the due process claim ends.’ ”
(*Ibid.*)

C. *The Evidence is Sufficient to Support the Verdict*

Appellant finally argues that the evidence was insufficient to support his guilt beyond a reasonable doubt of the crimes charged due to the inadequacy of the identifications, Hao Le’s connection to the armed robbery, and the lack of corroborating evidence. “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “*On appeal*, an appellate court deciding whether sufficient evidence supports a verdict must determine whether the record contains substantial evidence—which we repeatedly have described as evidence that is reasonable, credible, and of solid value—from which a reasonable jury could find the accused guilty beyond a reasonable doubt.” (*People v. Hovarter* (2008) 44 Cal. 4th 983, 996-997.)

Appellant’s arguments with respect to the sufficiency of the evidence ignore these fundamental tenets of appellate review. He persistently asks us to speculate regarding the motives of the victims and suggests facts not supported by the record which might undercut a finding of guilt. For instance, appellant posits the following speculative contentions in his brief: that Hao Le’s family persuaded Link not to testify about Le’s involvement; that Link convinced Yambao to recant her in-field identification of Le as the bigger robber; and that Yambao’s testimony was under the influence of her boyfriend’s desires. The record is void of support for these arguments. In addition, appellant misrepresents the facts when he says that the police showed Link the red Integra before displaying the two suspects and that only the larger robber came up to Yambao’s car window. The record is quite clear that Link saw the red Integra without any indication from the police officers and that Yambao specifically said, “Oh, yeah, they both came to my window first.”

More importantly, as respondent correctly asserts, appellant has not demonstrated any evidence that would require rejecting Link or Yambao's eyewitness testimony. Rather, Link and Yambao identified Nguyen within an hour after the robbery occurred as the smaller robber; they both identified appellant because of the longer length of his hair; Yambao identified Nguyen as the smaller robber because he looked "straight on like him"; Nguyen was arrested in the same red Acura Integra with the matching license plate number that the victims provided to the police; Link, Yambao Officer Wardlow, Officer Coburn, and Officer Fowler all confirmed that Nguyen wore a hat, with most witnesses confirming that it was a red, baseball-style cap; Link and Yambao confirmed Nguyen wore this hat when he robbed them as well as at the in-field showup; and Hao Le's testimony provided that the bigger robber likely left Nguyen's vehicle in between the robbery and the felony car stop. Considering these facts among all the other substantial evidence in the record, we find that there is sufficient evidence for a rational juror to have found proof of guilt beyond a reasonable doubt.

III. DISPOSITION

We affirm the judgment.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.

People v. Nguyen A136935